NOTES AND COMMENTS

CONSTITUTIONAL LAW

CIVIL LIBERTIES — FREEDOM OF THE PRESS VS. THE RIGHT OF PRIVACY.

Arnold Johnson applied for a temporary order to restrain the defendant, the Cleveland Press, from continuing the publication of articles which included a list of the names appearing upon the nominating petitions of the Communist Party. The petition alleged in part that the publication, in its obvious playing upon the "fifth column" and Communist hysteria, had exposed the signers of such petitions to open terror and physical violence. Damages were asked for the alleged invasion of the Plaintiff's and other signers' rights of privacy. Defendant filed a general demurrer on the ground that the petition failed to state a cause of action; in sustaining the demurrer, the court ruled that the right of a free press is paramount to the right of privacy, and freedom of the press imports freedom from any censorship over what shall be published.[1]

Ohio's Constitution, Article I, Section 2, provides: "Every citizen may freely speak, write, and publish his sentiments on all subjects being responsible for the abuse of the right and no law shall be passed to restrain or abridge the liberty of speech, or of the press."

It is apparent from the language used that punishment, and not prevention, shall be the method of controlling abuses of the constitutionally guaranteed rights of free speech and press. While it was never intended that these guaranties were to constitute an absolute license to speak and publish anything one pleases,[2] the determination of where license begins and freedom ends is generally held to be in the first instance a legislative matter.[3] Although the fourteenth amendment to the Federal Constitution protects the fundamental liberties from state aggression,[4] the states in the exercise of the police power may enact legislation punishing those who abuse freedom of speech and of the press by utterances

[1] Johnson *et al.* v. Scripps Publishing Co., 32 Ohio L. Abs. 423 (1940).

[2] State v. Kassay, 126 Ohio St. 177, 184 N.E. 521 (1933); Davis v. State, 118 Ohio St. 25, 160 N.E. 473 (1928); State v. Laundy, 103 Ore. 433, 204 Pac. 958 (1922); Whitney v. Calif., 274 U.S. 357 (1926).

[3] Near v. Minn., 283 U.S. 697, 51 Sup. Ct. 625 (1931); State v. Holm, 139 Minn. 267, 167 N.W. 181 (1918); Commonwealth v. Libby, 216 Mass. 356, 103 N.E. 923 (1914).

[4] Schneider v. Town of Irvington, —U.S.—, 84 L. Ed. 115, 60 Sup. Ct. 179 (1939); Gitlow v. N.Y., 268 U.S. 652, 45 Sup. Ct. 625 (1925); DeJonge v. State of Ore., 229 U.S. 353, 57 Sup. Ct. 255 (1937).

inimical to public welfare, or tending to incite to crime.[5] Once the limits to their exercise are set, it becomes the duty of the courts to determine whether the announced limitations go too far.[6] However, the power of a state to abridge the constitutionally guaranteed liberties must find its justification in a reasonable apprehension of danger to organized government.

Blackstone's definition of freedom of the press, "principally, although not exclusively, immunities from previous restraints or censorship,"[7] has become the accepted rule in a majority of our courts. Ohio, in accord with the great weight of authority, is opposed to a court of equity's taking jurisdiction to grant injunctive relief when that relief amounts to a control in advance of matters to appear in print.[8] However, a few jurisdictions will, upon the request of a plaintiff who has received a verdict in a law action branding the defendent's publications as libelous, grant an injunction to prevent further publication of the libel.[9] Even under the most favorable interpretation of the minority view, the court in the principal case could not grant the injunction demanded by the plaintiff.

Equally without merit was the plaintiff's claim for damages allegedly incurred as a result of the invasion of his and the other signers' right of privacy. The right of privacy has been defined as the right of an individual to withold himself and his property from public scrutiny if he so chooses.[10] Many jurisdictions deny the existence of a legal right of privacy.[11] Others recognize it as a legal right upon which a demand for injunctive relief or damages may be grounded.[12] Granted the existence of the right, decisions tend to recognize the several limitations upon the right as announced by Warren and Brandeis.[13] Foremost among the limitations is the principle that the right of privacy does not prohibit any publication of matter which is of public interest.[14]

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[5] Toledo Newspaper Co. v. U.S., 247 U.S. 402, 38 Sup. Ct. 560 (1938); Stromberg v. People of the State of Calif.,283 U.S. 359, 51 Sup. Ct. 532, 73 A.L.R. 1484 (1931).

[6] State v. Babst, 104 Ohio St. 167, 135 N.E. 525 (1922); U.S. v. Harmon 45 Fed. 414 (1891).

[7] IV Bl. Comm. *152.

[8] Johnson *et al.* v. Scripps Publishing Co., *supra;* Dopp v. Doll, 9 Ohio Dec. Rep. 428, 13 Cinc. L. Bull. 335 (1885); Daily v. Superior Ct., 112 Cal. 94, 44 Pac. 459, 32 L.R.A. 273 (1896).

[9] Wolf v. Harris, 267 Mo. 405, 184 S.W. 1139 (1916).

[10] Bouvier Law Dict., "Privacy."

[11] Hillman v. Star Publishing Co., 64 Wash. 691, 117 Pac. 594 (1911).

[12] Brent v. Morgan, 221 Ky. 765 (1927); Munden v. Harris, 153 Mo. App. 652, 134 S.W. 1076 (1911); Kunz v. Allen, 102 Kan. 883 (1918). See (1938) 4 O.S.L.J. 396.

[13] *The Right of Privacy*, 4 Harv. L. Rev. 193.

[14] Jones v. Herald Post Co., 230 Ky. 227, 18 S.W. (2d) 972 (1929); State v. Junkin, 85 Neb. 11, 122 N.W. 473 (1909); Williams Printing Co. v. Saunders, 113 Va. 156, 73 S.E. 472 (1912).

Nominating petitions, by statute in Ohio,[15] when filed with the secretary of state, become documents of public record open to public inspection and publication. It has been held that there was no invasion of property where a person, whether willingly or not, participates in a public event and has his role in that event publicized.[16] By availing himself of the right to nominate by petition, the voter assumed to know that the petition he signs, when filed with the secretary of state, will become public record. Consequently, there can be no immunity for the signers of a petition which will be invaded through the publication of their names by a newspaper. E. G.

CORPORATIONS

Appraisal Statutes — Sale of Corporate Assets — Conclusive Presumption of Fair Value Under Ohio Statute.

In a recent issue of this Journal[1] the decision of the Ohio Supreme Court in the case of *Voeller, et al.* v. *Neilston Warehouse Company, et al.*,[2] was reviewed. In that case the constitutionality of the appraisal section of the Ohio Corporation Act[3] was attacked. Over two-thirds of the shareholders had voted for the sale of a piece of real estate which constituted substantially all of the corporation's remaining assets. Plaintiffs voted against the sale and, complying with all the conditions precedent of the statute,[4] named an amount which they demanded of the corporation as the fair cash value of their shares. The corporation refused to pay the amount demanded but made no counter offer. After six months had elapsed, neither party having filed a petition for appraisal, the dissenting shareholders filed suit in the Court of Common Pleas asking that judgment be rendered in their favor for the amount originally demanded. There was judgment for the defendant which was later reversed by the Court of Appeals, one judge dissenting. The case

[15] Ohio G.C. Sec. 4785-92, reads in part, ". . . such petition papers shall be preserved and open under proper regulation to the public for at least five days prior to the fifty-fifth day preceding the election, during which time objections may be filed thereto and be heard by the secretary of state or board as the case may be. . . ."

[16] Jones v. Herald Post Co., *supra*.

[1] Note (1940) 6 O.S.L.J. 308.

[2] 136 Ohio St. 427, 26 N.E. (2d) 442 (1940).

[3] Ohio G. C., sec. 8623-72 par. 7: "If such petition (for appraisal) is not filed within such period (six months), the fair cash value of the shares shall conclusively be deemed to be equal to the amount offered to the dissenting shareholder by the corporation if any such offer shall have been made by it as above provided, or in the absence thereof, then an amount equal to that demanded by the dissenting shareholder as above provided."

[4] Ohio G.C., sec. 8623-72.